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## Minutes – Meeting 12 New Source Review Retooling Advisory Group February 10, 2004 – Madison, WI

**Advisory Group Participants:** Renee L. Bashel, Dept. of Commerce; Jeff Burger, DNR Southeast Region; Lloyd Eagan and Jeff Hanson, DNR Bureau of Air Management; Myron Hafele, Kohler Co.; Dave Hildreth, DNR Northeast Region; Rick Osa, STS Consultants; Michele Pluta, Alliant Energy; Annabeth Reitter, StoraEnso; Jeff Schoepke, Wisconsin Manufacturers & Commerce; Thomas T. Stocksdales, S.C. Johnson; Paul White (for Jon Konings), We Energies. **Absent:** Tom Estock, Quad/Graphics, Inc; Hank Handzel, DeWitt Ross & Stevens (WPC); Howard Hofmeister, Bemis Corp.; Imelda Stamm, DNR Northeast Region; Mark Thimke, Foley & Lardner.

**Others:** Jonathan Ela, Wisconsin Natural Resources Board; Todd Palmer, DeWitt Ross & Stevens; Ed Wilusz, Wisconsin Paper Council; Cindy Brandt, Wisconsin Public Service Corp.; Marcia Penner, DNR Legal Services; Mary Jo Kopecky, DNR Division of Air & Waste; Darin Harris (facilitator), DNR Management & Budget; Steve Dunn, Caroline Garber, Anne Urbanski (note taker), DNR Bureau of Air Management.

**Handouts/Overheads:** Available at <http://dnr.wi.gov/org/aw/air/hot/nsr/feb102004/> (note new domain name)

**Next meeting:** Friday, February 27, 2004, from 9:00 a.m. to 3:00 p.m. in Room 027, GEF 2, 101 S. Webster St., Madison.

### **Discussion**

**Introductions** – Jonathan Ela, new member of the Natural Resources Board, attended the first hour of the meeting.

**Public comments on proposed NSR rule revisions.** DNR held 4 public hearings at which eight people presented oral comments. The Department also received 28 sets of written comments for a total of 244 separate comments, of which 51 supported various aspects of the proposed revisions, 169 comments opposed various aspects and 24 were neutral. Jeff Hanson's [overheads](#) included a list of everyone who submitted comments. In the list of commenters, people on the left side were those not associated with any regulated source. Some included environmental representatives who declined DNR's invitation to participate in the NSR retooling advisory process. DNR did receive a comment suggesting that at least some NSR retooling meetings and public hearings be held at night so more people could attend. Stora Enso submitted comments but the company does not appear on the list of commenters; Lloyd Eagan said Stora Enso should resubmit their comments and DNR will look at them. ***Rule aspects on which DNR received comments:***

- Applicability test
- projected actual emissions
- demand growth (DNR specifically sought comment on this)
- operational history (Todd Palmer said DNR staff should read the WEPCO decision from the Seventh Circuit Court of Appeals which says operational history must be considered for replacement units)
- Plantwide Applicability Limits (PALs)
- Clean Units (CUs)
- Pollution Control Projects (PCPs) – not on slides but numerous potential projects were mentioned for list of PCPs, including recuperative thermal oxidizers and some material and process changes.

Darin Harris said the large number of comments opposing various items in the rule package suggests that perhaps DNR has not heard the advisory group's concerns, or perhaps the Department didn't

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translate its negotiated agreements with stakeholders into acceptable rule language. Was the process worth the time everyone has spent on it so far? DNR staff alone have put over 2,000 hours (equivalent to a person-year) into this process since last August. Does the group need to discuss whether to continue the TAG process? Several participants noted that the process itself had been good but their companies and organizations still had to take policy stands on some specific issues where the rule wasn't what they had hoped for, e.g. replacement units. Several people remarked that their organizations had commented about aspects beyond replacement units, such as consistency with other states/level playing field, 10-year look-forward period, 10-year look-back periods, baseline actual emissions, demand growth. Hanson noted that DNR did not receive a single piece of correspondence that supported the entire rule package. DNR received comments from 12 groups/companies associated with regulated facilities and from 22 that aren't. Forty-four of the 244 comments received came from a single organization/person. Marcia Penner advised the group not to worry about the number of comments received but to concentrate instead on the substance of each comment to help DNR decide about incorporating them. Ed Wilusz said the process is moving in the right direction from the paper council's perspective. The council had to raise objections concerning the Replacement Unit provisions, but DNR should definitely continue this process. Paul White said the group accomplished its goal of developing a rule that would work for industry and doing so in a timely fashion and We Energies suggests that DNR use this rule-making approach in other parts of the agency. Jeff Schoepke said that technical advisory groups rarely develop consensus rules. The comments about the NSR package contain only a handful of significant, substantive comments.

Now that the Department has received all these comments, Lloyd Eagan noted, it is required to address each comment individually. We have to get back to the NRB by May with our responses to the comments, which includes having some dialog with people who did not participate in the TAG process. She noted that the governor and attorney general as well as DNR oppose the federal NSR rule.

The TAG members agreed that the rule process was good, the rule that came out of it is much better than where DNR had started last summer, and it was better to do something than nothing. The big sticking points appeared to be replacement units and demand growth. Eagan noted that the legislature would probably not approve a rule package with so many negative comments so unless the TAG members and DNR can agree on more specifics, Wisconsin could end up continuing with its existing NSR rule.

**PSD/NSR interfaces – other three quarters of a loaf.** See [overheads](#). Hanson said he would continue to edit and amend this set of overheads to reflect discussion at the remaining NSR meetings. DNR sees four umbrellas or categories of interfaces that are generating some common questions. PCPs seem to have similar incentives for use – reducing emissions of targeted pollutant(s) -- and control methodology is part of the equation. For both PCPs and Clean Units, it's clear that regulations should not impede progress toward environmentally beneficial projects and we should not penalize installations of best available controls, but DNR does need to evaluate collateral increases of other emissions. Possible starting points for further discussion could be: when to exclude CUs or PCPs from minor NSR; treating qualifying projects as minor revisions under the operation permit program, enabling a facility to start and operate while DNR is reviewing the permit revision they've already submitted. Do these starting point proposals get industry past the traps, pitfalls etc. in chapters NR 400-499? Several representatives cited the example of a change in fuel for a boiler, e.g. switching from #2 fuel oil to natural gas. According to the current operation permit program, this would require a significant revision of a facility's operation permit. If you look at switching as a pollution control project being done for the purpose of reducing emissions, perhaps it's not a significant revision. The current purpose of the Title V permit program is to include all relevant permit conditions in a single document, but perhaps it will be possible to disconnect various permit revision scenarios from Title V when DNR goes back to EPA later this year to have our Title V program re-approved.

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### **Clean Unit/PCPs – Minor Source Proposals**

- PCP is considered a significant change and requires permit review → Then there is a 30-day public comment and 30-day public hearing process. Options:
  - Change Title V process
  - Consider change to source as minor
- Is there a way for DNR to classify different types of requirements for PCPs/CUs? (in Title V)?
- Change how minor revisions are defined
- Classify another requirement for PCP/CU in Title V
- Speed up approval/review process for operation permits
- Ask EPA to improve interface between Titles I and V
- Redefine construction period to include start-up/shutdown “shakedown” period
- Grant waiver for construction/operation
- Develop permit language for PCPs – “templates” (boilerplate)
- Write more operational flexibility into permits

**Homework assignment** – The following people volunteered to search the NR code sections listed below for references to “modification(s)” and to review them for pitfalls, traps etc., and send their analysis to Jeff Hanson by February 23:

- Caroline Garber – chapters NR 400-411
- Paul White – page 2 chapters NR 415-431
- Rick Osa – chapters NR 419-439
- Annabeth Reitter – chapter NR 440
- Renee Lesjak Bashel – chapters NR 445-449
- Imelda Stamm and Jeff Burger – chapters NR 460-469
- Jeff Hanson – chapters NR 484-499

### **Basic agenda for next meeting, Friday 2/27**

1. Finalize minor source PCP/Clean Unit
2. Review NR 400 series
3. Start PALs review

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